

## **PRESS RELEASE**



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Cape & Islands District Attorney Michael O'Keefe announced today a nolle prosequi has been filed in the case of Commonwealth v. Kevin S. Fowler. *See attached.*

On July 8, 2019 at a hearing in Nantucket District Court Judge Thomas S. Barrett appointed Attorney Jenny Margeson to represent the complaining witness regarding his Fifth Amendment right against self-incrimination. The proceeding was suspended after the judge, in a colloquy with the complaining witness and counsel, found that the complaining witness had a valid claim of the right.

On Sunday July 14, 2019 the complaining witness, family members, and the attorney for the complaining witness, met in the District Attorney's office to further review the case in light of the development. The complaining witness was informed that if he chose to continue to invoke his Fifth Amendment right, the case would not be able to go forward. After a further period of reflection privately with his lawyer, the complaining witness elected not to waive his right under the Fifth Amendment.

The complaining witness was further instructed that the only remaining avenue to continue the prosecution, since grants of immunity may not be made in district court, would be to

indict the defendant, immunize the complaining witness and force his testimony. This procedure has several infirmities. One, a defendant cannot be convicted on the uncorroborated testimony of an immunized witness. It is the second consideration that is more concerning. A grant of immunity compromises the witness to a degree which, in a case where the credibility of the witness is paramount, makes the further prosecution untenable.

As a consequence the Commonwealth has entered a nolle prosequi of the case.

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